

StormPay, Inc.

1690 Golf Club Lane
Clarkville, TN 37043

Telephone - 931-472-1040
Facsimile - 931-647-8970

June 14, 2007

Honorable Paul E. Davis
Director Division of Water Pollution Control
Tennessee Department of Environment and Conservation
6th Floor L&C Annex
401 Church Street
Nashville, TN 37243

RECEIVED
JUN 15 2007
Enforcement/Compliance

Re: In The Matter of: Crossville Raceway, Inc., StormPay, Inc.
and Steven C. Girsky
Division of Water Pollution Control
Case No.: WPC07-0111

Dear Mr. Davis:

Enclosed at this time please find the Petition Seeking Review of Director's Order and Assessment and Request for Extension of Compliance Dates submitted by the above named Respondents. We would respectfully request a hearing before the Water Quality Control Board. Our Petition also includes a request for extension of the compliance dates. As set forth in our Petition, we are hopeful we can meet the compliance dates but out of caution, we are requesting an additional 30 days. We do believe that we have completely solved any possible pollution issues at the track and our main goal at this juncture is to maintain complete compliance with any and all directives of the department. Most significantly, we are seeking a waiver of the fines/penalties assessed against us. I believe there may have been some miscommunication which resulted in the filing of the Director's Order and Assessment. I am hopeful we can quickly resolve this matter.

I am,

Sincerely,


Steven C. Girsky
steve@stormpay.com

Enclosures: Petition Seeking Review of Director's Order and Assessment

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

| | | |
|----------------------------------|---|-------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| CROSSVILLE RACEWAY, INC., |) | |
| STORMPAY, INC., |) | DIVISION OF WATER |
| AND STEVEN C. GIRSKY |) | POLLUTION CONTROL |
| |) | |
| |) | |
| RESPONDENTS |) | CASE NUMBER WPC07-0111 |
| |) | |

**PETITION SEEKING REVIEW OF DIRECTOR'S ORDER AND ASSESSMENT
AND REQUEST FOR EXTENSION OF COMPLIANCE DATES**

Comes now Steven C. Girskey, a lawyer licensed in the State of Tennessee, and on behalf of the above named respondents files this petition seeking review of the Director's Order and Assessment filed on June 4, 2007 and further requests an extension of compliance dates, and in support thereof would respectfully state and show as follows:

1. In regard to the averments set forth in Paragraph I of the Director's Order and Assessment (hereinafter "Order"), the same are admitted.
2. In regard to the averments set forth in Paragraph II of the Order, the same are admitted.
3. In regard to the averments set forth in Paragraph III of the Order, the same are admitted.
4. In regard to the averments set forth in Paragraph IV of the Order, the same are admitted.
5. In regard to the averments set forth in Paragraph V of the Order, it is admitted that the commissioner has certain powers as alleged, but it is denied that any of the respondents have violated any provisions of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*
6. In regard to the averments set forth in Paragraph VI of the Order, it is admitted that the respondents would be deemed "persons" as defined by

T.C.A. § 69-3-103(20). It is denied that any of the respondents have violated any provisions of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*

7. In regard to the averments set forth in Paragraph VII of the Order, the same are admitted.
8. In regard to the averments set forth in Paragraph VIII of the Order, the same are admitted.
9. In regard to the averments set forth in Paragraph IX of the Order, these respondents did not take ownership of the subject property until August 1, 2006 and have no knowledge or information regarding what inspections may or may not have taken place in February of 2006. Therefore, these averments are denied and strict proof thereof is demanded. All remaining averments set forth in Paragraph IX are denied.
10. In regard to the averments set forth in Paragraph X of the Order, these Respondents are aware of a letter directed to Mr. Dover dated February 13, 2006, but are personally unaware of what efforts were made by the division to investigate or communicate with Mr. Dover regarding any alleged violations observed by the division and therefore, deny these allegations and demand strict proof thereof.
11. In regard to the averments set forth in Paragraph XI of the Order, these Respondents deny there were any water pollution issues/violations and to that extent, deny these allegations and demand strict proof thereof. These Respondents would admit that they are aware of communications directed to Mr. Calvin Cheek by the division on May 17, 2006 advising Mr. Cheek of the division's concerns.
12. In regard to the averments set forth in Paragraph XII of the Order, these Respondents have recently become aware of a letter dated August 25, 2006 being directed to Calvin Cheek but have no information regarding what other or additional communications may have been directed to Calvin Cheek and therefore, neither admit nor deny the allegations of this paragraph, but demand strict proof thereof. These Respondents deny that there is any pollution or

violations of any provisions of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*

13. In regard to the averments set forth in Paragraph XIII of the Order, these Respondents deny that there is any pollution or violations of any provisions of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.* It is not know what inspection may have been conducted on September 13, 2006 and therefore, that allegation is denied.
14. In regard to the averments set forth in Paragraph XIV of the Order, it is admitted that correspondence dated September 20, 2006 was directed to StormPay. During this time, representatives of the division were in communication directly with Al Varnadore, a co-owner of the racetrack and the contact person for the Respondents who resides at the racetrack. Mr. Varnadore was working directly with Mr. William O. Hall of the department in an effort to solve any concerns/problems raised by the department. All remaining averments not specifically admitted, explained or denied, are hereby generally denied.
15. In regard to the averments set forth in Paragraph XV of the Order, the Respondents would aver that they originally submitted their NOI on November 2, 2006 (see exhibit 1)¹ but thereafter, submitted an amended NOI on November 21, 2006. All other material averments of this paragraph not specifically admitted or explained are hereby generally denied.
16. In regard to the averments set forth in Paragraph XVI of the Order, it is unknown specifically what inspection may have been undertaken by the division. It is denied that the division observed any sediment reaching Baker Branch. It is implicitly acknowledged by the division that actions and activities were undertaken by the Respondents to work toward correcting any perceived pollution problems at the racetrack. It is denied that the corrective actions undertaken by the Respondents were inadequate. The Respondents had acted very quickly upon notification from the division of any concerns

¹ The NOI submitted herewith in this attachment reflects certain corrective markings that were not on the original submission of November 2, 2006.

they had regarding pollution issues and undertook corrective action. The Respondents maintained regular communication with Mr. Bill Hall of the division throughout this process and vehemently deny any allegations or assertions to the contrary. A SWPPP was not submitted as the Respondents were working to correct the problem and believed the problem had been solved. At this time the Respondents had been working directly with Mr. William O. Hall of the department to attempt to solve the problem and thought they had an extension in regard to the submission of the SWPPP as they worked toward a final correction/solution of the problem.

17. In regard to the averments set forth in Paragraph XVII of the Order, it is acknowledged that the department did send a letter to the Respondents dated April 20, 2007. The content of that letter is self explanatory. All other material averments of this paragraph not specifically admitted or explained are hereby generally denied.
18. In regard to the averments set forth in Paragraph XVIII of the Order the same are denied. The Respondents replied immediately to the communications of Mr. Robert Howard of the department by means of a letter dated May 4, 2007. (see exhibit 2). In that letter the Respondents acknowledged Mr. Howard's letter of April 20, 2007 and explained to the department the steps taken to correct/solve the problems raised in the letter. The Respondents specifically requested additional time to complete their SWPPP and advised that the Respondents were working directly with Dan Dodson at the Tennessee Tech University Water Department. We were awaiting information from our technical advisors/experts and cited that as part of the reason for the request for additional time. Furthermore, on or about this same date steps were being undertaken to meet directly with representatives of the department on site. On May 10, 2007 a meeting was held at the site between the Respondents and Mr. William O. Hall of the department. At that time, the parties brainstormed to determine the best course of action to solve the issues raised by the department. It was determined that the Respondents would simply cap the drain at issue which would completely eliminate any possibility of any

pollutants reaching Baker Branch. Mr. Hall acted completely professionally during this meeting and was very instrumental in explaining our obligations and responsibilities regarding our reporting and record keeping requirements. After that meeting, corrective action was taken as discussed and the drain is now capped completely eliminating any pollution concerns.

19. In regard to the averments set forth in Paragraph XIX of the Order, it is admitted that T.C.A. §§ 69-3-108(b) and 69-3-114(a)-(b) were in full force and effect, but these Respondents deny that any actions or inactions on their part were in violation of these statutes.
20. In regard to the averments set forth in Paragraph XX of the Order, and for the foregoing reasons, it is denied that these Respondents should have any obligation to pay any such sums as set forth in the Order and Assessment of Paragraph XX.

AFFIRMATIVE DEFENSES

21. At all times pertinent herein, the Respondents have undertaken immediate action to attempt to correct any problems observed by the department. Corrections were made immediately upon receiving notification of the concerns of the department. The Respondents obtained ownership of this track in August of 2006. The previous ownership denied to these Respondents that there were any outstanding pollution issues at this track and as the departments files recognize, failed to address any of the pollution concerns of the department. Had the Respondents had early notice of any problems, they would have promptly undertaken remedial action. These Respondents have at all times acted in good faith and have cooperated with the department in regard to formulating a plan to address any concerns of the department. The photographs attached at (exhibit 3) clearly reflect that any pollution concerns of the department are resolved completely.
22. With respect to any assessment levied against Steve Girsky individually or against Crossville Raceway, Inc., the same is misplaced. Although Steve Girsky serves as the President of Crossville Raceway, Inc., that fact in and of

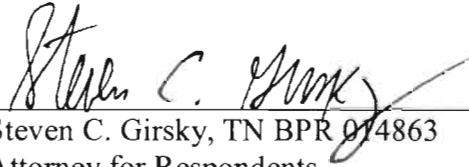
itself does not support the imposition of personal liability upon him. The entire purpose of the corporate structure is to shield officers, directors and shareholders from direct personal liability. No actions or inactions of this individual or the corporation Crossville Raceway, Inc. (StormPay, Inc. the owner of the real property and Crossville Raceway, Inc. is only the operator of the dirt race track) would impose direct liability upon the individual or the corporate entity Crossville Raceway, Inc., as the land in question is owned by StormPay, Inc.

REQUEST FOR EXTENSION OF COMPLIANCE DATES

23. These Respondents are hopeful that they will complete all mandates of the Order and Assessment within the time frames set forth but are presently relying upon third parties to assist in the preparation of the SWPPP. The Respondents have been in regular communication with their consulting experts and have advised them of the deadline date but in light of the summer months and the possibility of unexpected absences/vacations of their consulting experts, the Respondents would respectfully request that we be given an additional 30 days to complete all necessary compliance dates. The Respondents have supplied all necessary data and documentation to their experts and hope to have full compliance well in advance of the original date but must reasonably anticipate a delay if further information is needed.

Wherefore, premises considered, these Respondents respectfully request a hearing before the Water Quality Control Board and that any fines and penalties be waived and that all compliance dates be extended.

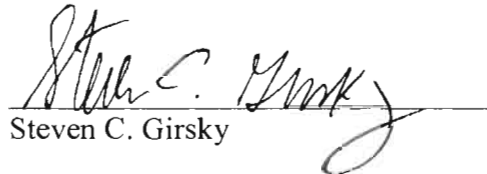
Respectfully Submitted:



Steven C. Girsky, TN BPR 014863
Attorney for Respondents
1690 Golf Club Lane
Clarksville, TN 37043
931-472-1040
steve@stormpay.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition Seeking Review of Director's Order and Assessment and Request for Extension of Compliance Dates was mailed by depositing a copy of the same in a postage prepaid envelope and mailed to the Honorable Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L&C Annex, 401 Church Street, Nashville, TN 37243 on this the 14th day of June, 2007.



Steven C. Girsky

EXHIBIT 1

**(November 2, 2006 letter to William O.
Hall along with completed NOI
containing corrective markings)**

StormPay. Inc.

1690 Golf Club Lane
Clarkville, TN 37043

Telephone - 931-472-1040
Facsimile - 931-647-8970

November 2, 2006

William Hall
Environmental Specialist 5
State of Tennessee Dept. of Environment and Conservation
1221 South Willow Ave.
Cookeville, TN 38506

Re: Notice of Violation Crossville Raceway Dirt Track
Receiving Stream: Baker Branch

Dear Mr. Hall:

I am in receipt of your letter of September 20, 2006. I understand you have been communicating with my partner, Al Varnadore in regard to the above matter. From speaking with Al I understand he has nearly completed the necessary repairs to resolve this situation. I do enclose at this time the completed Notice of Intent form as you have requested. We will be back in touch with you very soon once the repairs have been completed. Please feel free to contact me directly if you have any questions in the meantime.

I am,

Sincerely,



Steven C. Girsky
steve@stormpay.com

Enclosures: Notice of Intent

EXHIBIT 1

StormPay.com

The Universal Online Payment System



Department of Environment and Conservation - Division of Water Pollution Control

NOTICE OF INTENT (NOI)

for Storm Water Discharges Associated with Industrial Activity under the
TENNESSEE MULTI-SECTOR GENERAL PERMIT (TMSP)

| | |
|--|--|
| Facility Name: <u>Crossville Raceway, INC.</u> | County: <u>Cumberland</u> |
| Street Address or Location: <u>5434 Hwy 70 N, Crossville, TN 38571</u> | Latitude: <u>35.99734</u> Longitude: <u>-85.09026</u> |

Attach a copy of U.S.G.S. topographical map, a city map, or a county map, identifying the location of this facility.

| | | | |
|---|---|--|---------------------------------------|
| Owner or Operator: (the person or legal entity which controls facility's operation; this may or may not be the same as the facility name or the official contact name) | | | |
| Official Contact Person Name: (Individual Responsible for a Facility) <u>Steven Girsky</u> | | Title or Position: <u>President</u> | |
| 1 | Mailing Address: <u>1690 Golf Club Lane</u> | City: <u>Crossville</u> | State: <u>TN</u> Zip: <u>38571</u> |
| | Phone: () (931) 472-1040 | E-mail: <u>Steve@StormPay.com</u> | |
| Local Contact Person Name: (if appropriate, write "same as #1") <u>Al Varnadore</u> | | Title or Position: <u>General Manager</u> | |
| 2 | Facility Address: (this may or may not be the same as street address) <u>5434 Hwy 70 N</u> | Facility City: <u>Crossville</u> | State: <u>TN</u> Zip: <u>38571</u> |
| | Phone: (931) 456-5000 () sell (931) 210-4277 | E-mail: <u>Al21v@aol.com</u> | |
| Please write in the box (to the right) or circle the number next to the Official Contact Person or the Facility/Local Contact Person information (above) to indicate where you would like us to send invoices and correspondence: | | | <u>1</u> |

| | | | | | |
|---|--------------------------------------|--|---|--|--|
| Storm water runoff from facility enters following stream(s) and/or lake(s): (for each outfall, give names and stream miles) <u>Allegedly, Baker Branch</u> | | Number of storm water outfalls: <u>1</u> | | | |
| Nature of business: <u>Dirt Race Track</u> | | SIC code(s): (primary code listed as No. 1, secondary, if applicable, as No. 2, etc.) 1. <u> </u> 2. <u> </u> 3. <u> </u> 4. <u> </u> 5. <u> </u> 6. <u> </u> | | | |
| Area of property associated with industrial activity: <u>Acres</u> (area of facility property should not include recreation areas, landscaping, lawns, greenfields, forest, office buildings, employee parking lots, etc.) | | Permit Sectors (STATE USE ONLY) | | | |
| Activities at facility: Check all that apply. | | | | | |
| 01. <u> </u> Manufacturing | 05. <u> </u> Vehicle Maintenance | 09. <u> </u> Wastewater treatment | 13. <u> </u> Coal Pile | | |
| 02. <u> </u> Storage/Distribution | 06. <u> </u> Hazardous waste TSD | 10. <u> </u> Land application | 14. <u> </u> Borrow Pit or Soil Harvesting | | |
| 03. <u> </u> Vehicle Storage | 07. <u> </u> Outside waste disposal | 11. <u> </u> Landfill | 99. <u> </u> Other <u>Dirt Race Track</u> | | |
| 04. <u> </u> Trucking Terminal | 08. <u> </u> Recycling | 12. <u> </u> Mining operation | <u>Permit Section 10</u> | | |

CERTIFICATION AND SIGNATURE (Make all entries in ink, not with a pencil. This NOI must be signed by a responsible corporate officer for a corporation, a general partner for a partnership, the proprietor for a sole proprietorship, or a principal executive officer or ranking elected official for a public agency.)

| | | | |
|---|------------------|----------------------|----------------|
| I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. | | | |
| <u>Steven Girsky</u> | <u>President</u> | <u>Steven Girsky</u> | <u>11/1/06</u> |
| Printed Name | Official Title | Signature | Date |
| If this NOI is submitted because of new operator or to update facility information (such as name of facility, new contact, E-mail address, etc.), please provide the existing permit tracking number: | | | |

| | | | | |
|----------------------------|---------------------|----------------------|--------------|----------|
| STATE USE ONLY | | | | |
| Received Date | Postmark | NOC Date | Tracking No. | EAC |
| Impaired Receiving Stream? | High Quality Water? | T & E Aquatic Fauna? | Fee | Reviewer |

Submit the original of the completed and signed form to:
Storm Water NOI Processing
Tennessee Division of Water Pollution Control
6th Floor L&C Annex, 401 Church Street
Nashville, TN 37243-1534Mining and Quarrying facilities only (Sectors J and H):
Storm Water NOI Processing - Mining Section
Tennessee Division of Water Pollution Control
2700 Middlebrook Pike, Suite 220
Knoxville, TN 37921-5602

EXHIBIT 2

**(Letter dated May 4, 2007 directed to
Robert Howard)**

StormPay, Inc.

1690 Golf Club Lane
Clarksville, TN 37043

Telephone - 931-472-1040
Facsimile - 931-647-8970

May 4, 2007

Robert Howard
State of Tennessee Dept. of Environment and Conservation
1221 South Willow Ave.
Cookeville, TN 38506

Re: Notice of Violation Crossville Raceway Dirt Track
Receiving Stream: Baker Branch

Dear Mr. Howard:

I am in receipt of your letter dated April 20, 2007. We certainly take the issues you have raised very seriously. As you know, we have already undertaken efforts to work toward correcting this problem. We believed we did have this problem solved, but I understand that your office believes there still may be some problems. To that end, we have consulted with Mr. Dan Dodson at Tennessee Tech University. He has been very helpful. He has also referred us to a hydrologist, Dr. Vincent Neary, who is presently reviewing this problem for us. We are working to prepare an appropriate Storm Water Pollution Prevention Plan with the help of these consulting experts. We are still awaiting further communication from these gentlemen, and for that reason, we would respectfully request some additional time to get this plan formulated and completed. We would very much appreciate the chance to visit with Mr. Bill Hall or any other designated representative from the Department at the site so we can work to better understanding both perspectives on this problem. Please let me know if we can set that up. We will make ourselves available at any time for this purpose. Thanks so much for your professional courtesy.

I am,

Sincerely,



Steven C. Girsky
steve@stormpay.com

EXHIBIT 2

cc: William Hall
Environmental Specialist 5
State of Tennessee Dept. of Environment and Conservation
1221 South Willow Ave.
Cookeville, TN 38506

Al Varnadore
Crossville Raceway
5434 Highway 70 N.
Crossville, TN 38571

EXHIBIT 3

**(Photographs of corrective action
undertaken at the Crossville Raceway)**

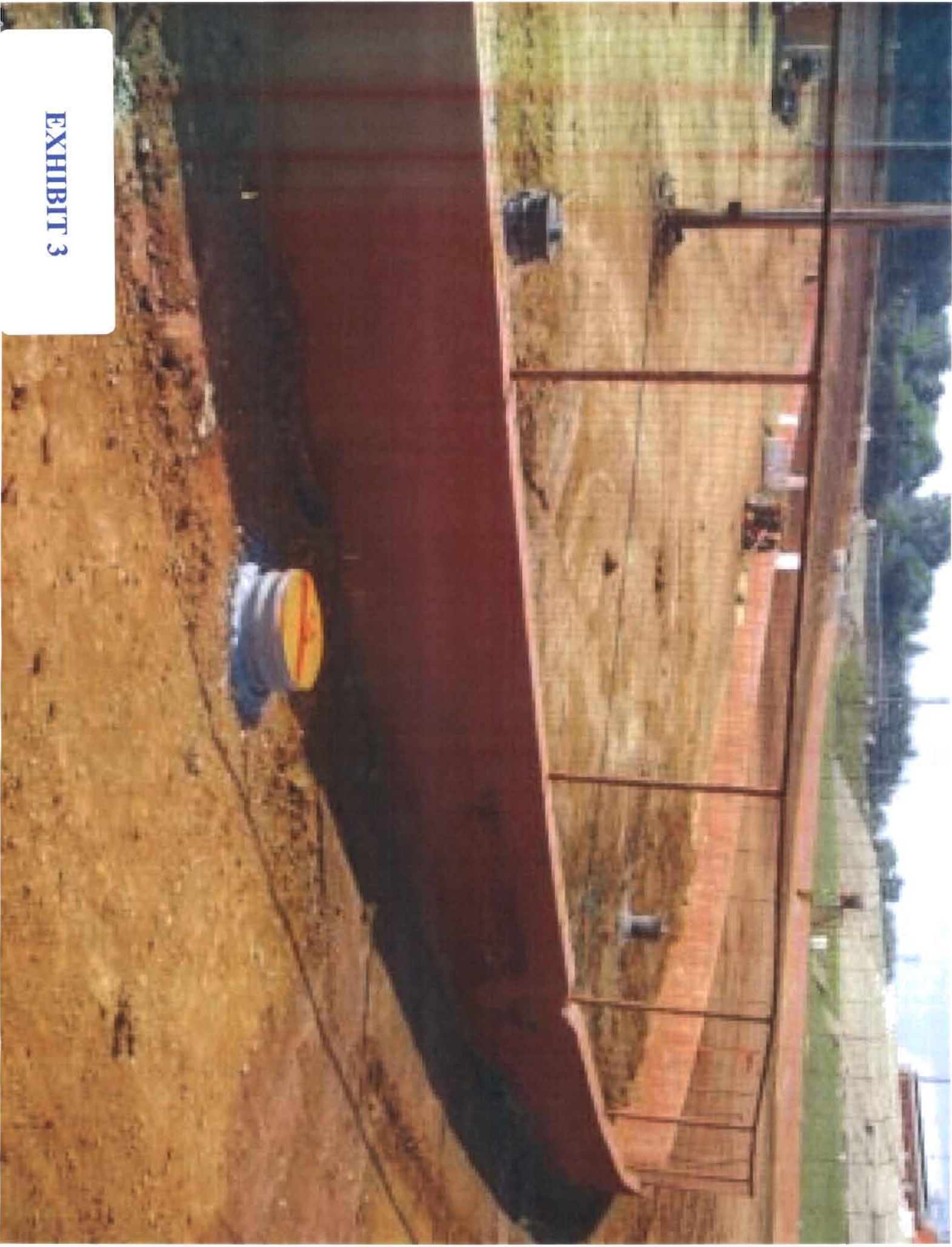


EXHIBIT 3





